

(e)(4) of this section. If an abandonment or discontinuance is granted and a party wishes the Board to have the opportunity to consider a petition to reopen before the abandonment or discontinuance authorization becomes effective, it must file its petition within 15 days after the administratively final decision is served together with a request for a stay of effectiveness under paragraph (e)(7) of this section. If such a petition to reopen and stay request is received within that 15-day period, any replies to the petition to reopen must be filed no later than 25 days after the date the decision is served, and any reply to the stay request must reach the Board no later than 5 days after the stay request is filed.

(ii) The Board will grant a petition to reopen only upon a showing that the action would be affected materially because of new evidence, changed circumstances, or material error.

(3) *Form.* A petition to reopen and any reply shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments.

(4) *Petitions to reopen administratively final actions.* A person may file a petition to reopen any administratively final action of the Board. A petition to reopen shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. An original and 10 copies of such petitions must be filed with the Board.

(5) *Judicial review.* (i) Parties may seek judicial review of a Board action in an abandonment or discontinuance proceeding on the day the action of the Board becomes final.

(ii) If a petition seeking reopening is filed under this section, before or after a petition seeking judicial review is filed with the courts, the Board will act upon the petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

(6) *Petitions to vacate.* In the event of procedural defects (such as the loss of a properly filed protest, the failure of the applicant to afford the public the requisite notice of its proposed abandonment, etc.), the Board will entertain petitions to vacate the abandonment or

discontinuance authorization. An original and 10 copies of these petitions to vacate must be filed with the Board.

(7) *Petitions to stay.* (i) The filing of a petition to reopen shall not stay the effect of a prior action. An original and 10 copies of any petitions to stay must be filed with the Board.

(ii) A petition to reopen an administratively final action may be accompanied by a petition for a stay of the effectiveness of the abandonment or discontinuance. As provided in paragraph (e)(2) of this section, a petition to reopen must be accompanied by a stay request if the party wishes the Board to have the opportunity to consider the petition to reopen before the abandonment or discontinuance authorization becomes final.

(iii) A party may petition for a stay of the effectiveness of abandonment or discontinuance authorization pending a request for judicial review. The reasons for the desired relief shall be stated in the petition, and the petition shall be filed not less than 15 days prior to the effective date of the abandonment authorization. No reply need be filed. If a party elects to file a reply, the reply must reach the Board no later than 5 days after the petition is filed.

[61 FR 67883, Dec. 24, 1996, as amended at 62 FR 34669, June 27, 1997]

#### **§ 1152.26 Board determination under 49 U.S.C. 10903.**

(a) The following schedule shall govern the process for Board consideration and decisions in abandonment and discontinuance application proceedings from the time the application is filed until the time of the Board's decision on the merits:

Day 0—Application filed, including applicant's case in chief.

Day 10—Due date for oral hearing requests.

Day 15—Due date for Board decision on oral hearing requests.

Day 20—Due date for Notice of Application to be published in the FEDERAL REGISTER.

Day 45—Due date for protests and comments, including opposition case in chief, and for public use and trail use requests.

Day 60—Due date for applicant's reply to opposition case and for applicant's response to trail use requests.

Day 110—Due date for service of decision on the merits.

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Day 120—Due date for offers of financial assistance, except that if an application has been granted by decision issued sooner than Day 110, the offer of financial assistance shall be due 10 days after service of the decision granting the application.

(b) If an application for abandonment or discontinuance is filed by a bankrupt railroad, the Board shall base its decision (Report to the Bankruptcy Court) on the application and any responses to the application that are filed. In each such instance, the Board shall establish a reasonable period of time for filing responses to the application so that public input can be included in the Board's decision (Report) and so that the Board will be able to meet a deadline imposed or requested by the Bankruptcy Court. Because Board action on abandonment applications by bankrupt railroads is advisory only, no environmental filings or analysis is necessary. See 49 CFR 1105.5(c).

[61 FR 67883, Dec. 24, 1996, as amended at 62 FR 34670, June 27, 1997]

### § 1152.27 Financial assistance procedures.

(a) *Provision of information.* An applicant must provide promptly upon request to a party considering an offer of financial assistance to continue existing rail service, and concurrently to the Board, the following:

(1)(i) *In an application or petition for exemption proceeding*, an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(ii) *In a class exemption proceeding*, either an estimate of the annual subsidy or the minimum purchase price, depending upon the type of financial assistance indicated in the potential offeror's formal expression of intent submitted under paragraph (c)(2)(i) of this section;

(2) Its most recent reports on the physical condition of the involved line; and

(3) Traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue rail transportation over that part of the railroad line. In an exemption proceeding, the data to be provided must at a minimum include the carrier's estimate of

the net liquidation value of the line, with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in a line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use), and, if an offer of subsidy is contemplated, an estimate of the cost of rehabilitating the line to Federal Railroad Administration class 1 Safety Standards (49 CFR part 213).

(b) *Federal Register notice*—(1) *Abandonment and discontinuance applications.* The FEDERAL REGISTER publication, which gives notice of the filing of the application 20 days after the application is filed, will serve as notice to persons intending to offer financial assistance to assure continued rail service under 49 U.S.C. 10904 and these regulations as they relate to abandonment and discontinuance applications. Offers of financial assistance will be due 120 days after the application is filed or 10 days after a decision granting the application is served, whichever occurs sooner.

(2) *Exemption proceedings.* (i) If a petition for individual exemption from the prior approval requirements of 49 U.S.C. 10903 is filed with the Board for abandonment or discontinuance of a line of railroad, the Board will publish notice of the petition in the FEDERAL REGISTER within 20 days of the filing of the petition. The FEDERAL REGISTER publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service on the line under 49 U.S.C. 10904 and these regulations as they relate to exempt abandonments and discontinuances. Offers of financial assistance will be due 120 days after the filing of the petition for exemption or 10 days after service of a Board decision granting the exemption, whichever occurs sooner.

(ii) If a notice of exemption is filed under the class exemption, the Board will publish notice of the exemption in the FEDERAL REGISTER within 20 days of filing. The FEDERAL REGISTER publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service on the line under 49